

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MYRIAM ZAYAS.

CASE NO. C20-0981JLR-TLF

Plaintiff,

## ORDER

V.

DEPARTMENT OF CHILDREN  
YOUTH AND FAMILIES, et al.,

## Defendants.

## I. INTRODUCTION

This matter comes before the court on the Report and Recommendation of United States Magistrate Judge Theresa L. Fricke (R&R (Dkt. # 57)) and *pro se* Plaintiff Myriam Zayas's objections thereto (Obj. (Dkt. # 58).) Magistrate Judge Fricke recommends that the court grant Defendants Shea Hopauf and Jamia McRae's (collectively, "Defendants") motion to dismiss Ms. Zayas's fifth amended complaint. (R&R at 22; MTD (Dkt. # 40); 5th Am. Compl. (Dkt. # 32).) Defendants filed a response to Ms.

1 Zayas's objections.<sup>1</sup> (Resp. (Dkt. # 59).) Having carefully reviewed all of the foregoing,  
 2 all other relevant documents, and the governing law, the court ADOPTS in part and  
 3 MODIFIES in part the Report and Recommendation.

4 **II. ANALYSIS<sup>2</sup>**

5 A district court has jurisdiction to review a Magistrate Judge's report and  
 6 recommendation on dispositive matters. Fed. R. Civ. P. 72(b). "The district judge must  
 7 determine de novo any part of the magistrate judge's disposition that has been properly  
 8 objected to." *Id.* "A judge of the court may accept, reject, or modify, in whole or in part,  
 9 the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1).  
 10 The court reviews de novo those portions of the report and recommendation to which  
 11 specific written objection is made. *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121  
 12 (9th Cir. 2003) (en banc). "The statute makes it clear that the district judge must review  
 13 the magistrate judge's findings and recommendations de novo if objection is made, but  
 14 not otherwise." *Id.* Because Ms. Zayas is proceeding *pro se*, this court must interpret her  
 15 complaint and objections liberally. *See Bernhardt v. Los Angeles Cnty.*, 339 F.3d 920,  
 16 925 (9th Cir. 2003).

17 //

18 //

19 //

---

20 <sup>1</sup> Defendants did not file their own objections to the Report and Recommendation. (See  
 21 generally Dkt.)

22 <sup>2</sup> The court ADOPTS Magistrate Judge Fricke's detailed discussion of the factual and  
 procedural background of this case. (See R&R at 1-5.)

1 As an initial matter, Ms. Zayas's objections are untimely. Magistrate Judge Fricke  
2 provided Ms. Zayas 14 days to file written objections to the Report and  
3 Recommendation. (R&R at 22 (citing 28 U.S.C. § 636(b)(1) and Federal Rule  
4 of Civil Procedure 72(b)).) Thus, Ms. Zayas's objections were due no later than Friday,  
5 August 20, 2021. (*See id.*) Ms. Zayas, however, did not file her objections until  
6 Monday, August 23, 2021. (*See Obj.*) Although Ms. Zayas is proceeding *pro se* in this  
7 matter, she must follow the same rules of civil procedure that govern litigants who are  
8 represented by counsel. *Banks v. Soc'y of St. Vincent De Paul*, 143 F. Supp. 3d 1097,  
9 1101 (W.D. Wash. 2015). Accordingly, the court STRIKES Ms. Zayas's late-filed  
10 objections.

11 Even if Ms. Zayas had timely filed her objections, the court would nevertheless  
12 deny those objections and adopt the Report and Recommendation. Although Ms. Zayas  
13 does not specifically identify the recommendations to which she objects, the court  
14 liberally construes her objections as taking issue with Magistrate Judge Fricke's  
15 recommendation that the court dismiss her 42 U.S.C. § 1983 equal protection, due  
16 process, and search and seizure claims and her 42 U.S.C. § 1985 conspiracy claim. (*See*  
17 *generally Obj.*) The court has considered Magistrate Judge Fricke's recommendations *de*  
18 *novo* in light of those objections. Ms. Zayas's objections do not raise any novel issues  
19 that were not addressed by Magistrate Judge Fricke's Report and Recommendation.  
20 Moreover, the court has thoroughly examined the record before it and finds Magistrate  
21 Judge Fricke's reasoning persuasive in light of that record. Therefore, the court  
22

1 ADOPTS the Report and Recommendation with respect to the motions and claims  
2 discussed therein.

3 The court, however, MODIFIES the Report and Recommendation in one respect.  
4 Although Defendants moved to dismiss Ms. Zayas's state-law intentional infliction of  
5 emotional distress ("IIED") claim (*see* MTD at 18-19), the Report and Recommendation  
6 does not address that claim (*see generally* R&R). Ms. Zayas lists IIED in the caption of  
7 her fifth amended complaint but does not otherwise discuss the claim in her complaint.  
8 (*See* 5th Am. Compl. at 1; *see generally* *id.*) The court agrees with Defendants that  
9 where, as here, a plaintiff bases her common law IIED claim on the same facts upon  
10 which she bases her civil rights claims, the IIED claim must be dismissed. *See Ellorin v.*  
11 *Applied Finishing, Inc.*, 996 F. Supp. 2d 1070, 1093-94 (W.D. Wash. 2014) (dismissing  
12 plaintiff's IIED claim because it was based on same factual allegations as her civil rights  
13 claims). Accordingly, the court MODIFIES the Report and Recommendation and  
14 DISMISSES Ms. Zayas's IIED claim with prejudice.

### 15 III. CONCLUSION

16 For the foregoing reasons, the court ADOPTS in part and MODIFIES in part  
17 Magistrate Judge Fricke's Report and Recommendation (Dkt. # 57), as follows:

18 1. The court GRANTS Defendants' motion to strike Ms. Zayas's second  
19 through sixth briefs in response to Defendants' motion to dismiss. (*See* MTD Reply  
20 (Dkt. # 49) at 2-3; 2d Resp. Br. (Dkt. # 47); 3d Resp. Br. (Dkt. # 48); 4th Resp. Br. (Dkt.  
21 # 50); 5th Resp. Br. (Dkt. # 56); *see* R&R at 5-6.)

1       2. The court GRANTS Defendants' motion to strike the following exhibits  
 2 attached to Ms. Zayas's first response to its motion to dismiss: Exhibit 0429, Exhibit  
 3 0624, Exhibit 1102, and the last two pages of Exhibit 0317. (See MTD Reply at 3-4; 1st  
 4 Resp. Br. (Dkt. # 44); R&R at 7-10.)

5       3. The court GRANTS Defendants' request to take judicial notice of six  
 6 exhibits attached to the January 15, 2021 Declaration of Brendan Lenihan. (Req. for J.  
 7 Not. (Dkt. # 40-1); Lenihan Decl. (Dkt. # 41) ¶¶ 2-7, Exs. 1-6; *see* R&R at 10-12.)

8       4. The court GRANTS Defendants' motions to strike Ms. Zayas's sixth and  
 9 seventh amended complaints. (MTS 6th Am. Compl. (Dkt. # 53); MTS 7th Am. Compl.  
 10 (Dkt. # 55); 6th Am. Compl. (Dkt. # 52); 7th Am. Compl. (Dkt. # 54); *see* R&R at 6-7.)

11       5. The court GRANTS Defendants' motion to dismiss Ms. Zayas's 18 U.S.C.  
 12 § 242, RCW 42.20.100, and intentional infliction of emotional distress claims. (MTD at  
 13 18-19; R&R at 20; *supra* at 4.) The court DISMISSES these claims with prejudice.

14       6. The court GRANTS Defendants' motion to dismiss Ms. Zayas's 42 U.S.C.  
 15 §§ 1983 and 1985 claims. (MTD at 12-18; R&R at 15-19, 21-22.) The court  
 16 DISMISSES these claims without prejudice and with leave to amend.

17       Ms. Zayas may file an amended complaint that addresses the deficiencies  
 18 identified herein and in Magistrate Judge Fricke's Report and Recommendation within 21  
 19 days of the filing date of this order. The Clerk is DIRECTED to send copies of this order  
 20 to the parties and to Magistrate Judge Fricke.

21       //

22       //

1 Dated this 8th day of September, 2021.  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22



---

JAMES L. ROBART  
United States District Judge